113, 604, 601, 428, 171 Kazak RQ2

[For discussion of the avunculate and inheritance of part of the avuncular estate among the Kazakh, and relation between these and similar complexes among the Mongol peoples, see 10: Krader, AH1 Mongolia, category 116, pp. 591-600.]

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

themselves during the winter, or if he had sufficient means, purchase hay or rent land on which to raise it. The related hangers-on of a wealthy man who had helped harvest his hay had the privilege of gleaning what was left after the first cutting and sometimes of cutting hay in the poorer parts of the meadow.

Agricultural lands were not extensive and were the private property of individuals. To some extent they belonged to affluent persons and were worked by their laborers and henchmen. More generally, however, they were subsistence plots cultivated by poor families who had no cattle. It is difficult to get specific information on how such an impoverished family might obtain the land in the first place on which to start operations. As far as I could learn it was merely a question of settling down and cultivating. No one seems to have had any objection to the launching of such an enterprise but all looked upon its practitioners with disdain as people who had lost all social standing.[55]

In reference to all forms of strictly individual property in land it seems likely that we are dealing with comparatively recent innovations in Kazak culture resulting from the influence of the sedentary populations in the Central Asian khanates to the south and in Russian territory to the north. The tendency to personal ownership in land appears simultaneously and in connection with the increase of permanent winter habitations, the storing of fodder for the winter, the introduction of agriculture, and the emphasis on sheep and cattle raising as opposed to horse culture.[55a]

INHERITANCE

The system of inheritance of property among the Kazak was simple in principle although its details in any given case might become highly complex. Properly speaking only the youngest son inherited, the others normally being provided for during the lifetime of the father. When a son married or came of age he was given a share (enci) of his father's animals and established his own household. The age at which this occurred varied with the wealth and social position of the father, being earlier among the rich. In any event it did not normally take place before the son was fifteen years old.[56] Before this time the son had no property of his own, but afterward the father had no control over that which had been allotted to him.[57] The division among all the sons except the youngest was occasionally made at one time, before witnesses, rather than as each son came of age. Such divisions frequently presented difficulties which might be arbitrated by the leaders of the group to decide the minimum share to which each son was entitled. Beyond this minimum the father might assign the property as he saw fit,[58] although according to my information it was customary

[55] Compare Dingelstedt, *Le Droit coutumier*, 213–14.

[55a] The historical and geographical factors influencing the development of land tenure among the Kazak have recently been discussed by E. E. Bacon in a paper read before the American Anthropological Association in New Haven, December, 1937.

[56] Grodekov, *Kirgizy i Karakirgizy*, 43.

[57] *Idem*, 34.

[58] Dingelstedt, *Le Droit coutumier*, 153–54.

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

428 to keep the shares of all sons as nearly equal as possible. If the father had not already negotiated for wives for his sons, the first necessity was to assure to each a sufficient competency in animals to pay the bride price. This requirement frequently absorbed the major part of the estate.

The division among the older sons having taken place, the remainder after the death of the father passed to the youngest son. He inherited also the kibitka of his father and the winter dwelling, although if the father had not had the means to provide the other sons with their own houses for winter they might continue to live with the youngest son in the house he had inherited.[59]

[583] A daughter did not normally inherit, but among the wealthier families received on her marriage a dowry which was, theoretically at least, held in trust for her by her husband.[60]

A daughter might also be considered in herself a valuable part of the inheritance in anticipation of the bride price which might later be received on her marriage. This potential income, especially in poor families where there was little actual property to divide, might be of great importance, and the sons, if there were nothing else, would apportion among themselves the bride price received for their sisters.[61]

[429] [587] If a father died while his children were still minors his estate would be held in trust for them until they came of age by his brother, who, under the levirate, would normally marry the widow. That this guardianship was not without its perquisites is indicated by Grodekov's remark[62] that, "Upon coming of age the heir may overlook the embezzlement of his portion."

According to Levshin[63] careful husbands kept separate from their own possessions the dowries of their wives, since the wife's property was inherited by her own children alone and not by other children of her husband. I am not sure that this was usually the case. My informants were inclined to think that most husbands were not over-scrupulous about annexing their wives' dowries to their own property.

If a man died childless, his widow or widows, according to my information, would inherit. If there were more than one, the largest share went to the senior wife, in priority of marriage, and smaller shares to the junior wives. The actual division was determined [587] by the aqsaqal.[1] A widow marrying again retained the property which she had inherited. It did not pass to her new husband, although normally she would be expected to marry his younger brother, in which case it would remain in the family.

[597] Adoption might take place in order to acquire an heir. According to Tlenshiev, if a man died leaving only an elderly widow and no children she might adopt a son from another family in the uru, probably a son of the deceased husband's brother, who would be formally considered as her son and would inherit the property of her husband after her death.

[59] See also Radlov, *Aus Sibirien*, 1: 416.
[60] See also Levshin, *Description des hordes*, 364.
[61] Dingelstedt, *Le Droit coutumier*, 153–54.
[62] *Kirgizy i Karakirgizy*, 40.
[63] *Description des hordes*, 363.

[1] [leader of uru -- Analyst]

2: Hudson E-4, 5 (1936) 1938 BQ2 Kazak BQ2

The general practice of allotting to a man's sons, as they came of age, their share of the inheritance was an important factor in facilitating the formation of new uru groups. This process has been mentioned in the discussion of the nature of the uru and will be evident again in a consideration of other Turkic and Mongol peoples.

DEBTOR AND CREDITOR

The wealthy patron and the poor relative frequently appear in the relation of creditor and debtor. The importance of this relation is reflected in the special terminology for loans of different kinds of animals; savɓn, for example, means the loan of a milch cow, and majɓn, the loan of a horse. Animals were frequently borrowed for the purpose of paying the bride price. Such loans were made in the presence of witnesses. Ujfalvy[64] says that one hundred percent interest was customary. According to my information interest was paid on these loans in the form of labor by the debtor for the creditor in addition to repayment of the animals. Dingelstedt[65] does not specify the nature of interest but remarks that there were generous individuals who lent without interest. He adds that the site of the winter quarters was sometimes offered as security for the loan. My informants said that in default of payment the debtor was obliged to work for his creditor without payment until the value of the loan had been covered at the rate of about seven sheep a year, which was the approximate wage of a shepherd.

There is, apparently at least, a difficulty here. Under the patriarchal relationship existing between the wealthy herd owners and their poor relatives, the latter might be already serving his patron as shepherd and general handyman without wages for his living only. How then would he repay the debt? The only information I could get was that the unfortunate individual simply kept on working as before.

There seems to be a very important point involved here, much more so than the dilemma of the unfortunate defaulter, namely the nature of the relationship between patron and client and the significance of the bonds of kinship in the uru. There are apparently two tendencies involved, or two points of view from which the relationship can be considered. Regarded as a benevolent patron and protector, the wealthy man gave aid, protection and support to his poorer relatives in recognition of the claims of kinship and as a natural obligation of his position in return for the services of his dependents as herdsmen in times of peace and armed retainers in war. No exact mechanical balancing of accounts on behalf of each was possible. On the other hand the wealthy herd owners may be regarded as harsh exploiters of the poor, intent only on exacting from them as much as possible in the form of service and labor, and giving in return as little as possible.

Tlenshiev was clearly aware of these divergent points of view. After talking about the loan of cows, horses or sheep as might be needed by the rich to their dependents, he grew suddenly thoughtful and then explained that although these facts had been used by "coun-

[64] Ujfalvy de Mezö-Kövesd, *Expédition scientifique*, 2: 113.
[65] Dingelstedt, *Le Droit coutumier*, 216.

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak
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428 On the death of the head of a household his property was inherited by his youngest son,
614 Rashid writes:[68] "The Mongol custom is thus: that the youngest son is called ejen for this reason, that he stays at home and the property, economy and premises are assigned to him." Also[69] "The meaning of ejen is the youngest son who remains in the home and yurt, that is, lord of the fire and the yurt." It is probable, though direct evidence is lacking, that unmarried sons customarily lived together with their family and at marriage received their individual allotments. Riazanovskii[70] quotes an unspecified version of the Yasa of Chingis as saying that the distribution of the heritage is done so that the senior son receives more than the junior although the youngest son inherits the household of the father.

INTER-GROUP RELATIONS

614 To each member of the Mongol gens his relatives were urux, meaning kinsmen.[71] However, not only the members of a particular gens were reckoned as urux but members of all gentes related among themselves by blood by reason of descent from a traditional common ancestor. Between such relatives and related gentes the recognition of certain obligations of mutual defense, protection and assistance was expected. However, the acceptance of these obligations seems to have depended a great deal upon the nature of the occasion and the self interests of the particular group or its leaders. Hostile relations frequently existed between gentes who were close urux to one another and Rashid[72] mentions some who in his words "occupy themselves unceasingly with raids, wars and rapes among themselves."

Also a status of relatives by courtesy was accorded to members of the gens to whom one was related by marriage, all of whom were known as xuda.[73]

608 Another possible relationship between members of different groups was a ceremonial assumption of brotherhood. Two individuals, usually belonging to different though fairly closely related gentes, concluded between themselves a union of friendship and exchanged presents after which they were considered anda, brothers in name to one another. According to the "Secret History"[74] " . . . the old people say that when anda has been made both individuals have as only one life between them. One will not forsake the other and they protect one another with their lives." Anda did not actually live together but were expected to support one another exactly as members of the same gens. However, in actual life the relationship was probably more ceremonial than real; former anda might take up arms against one another as was the case with Chingis and Jamuga.[75] The fact that the

[68] *Sbornik Letopisei*, 1: 207.
[69] Rashid-ed-Din, *op. cit.*, 2: 30.
[70] *Customary Law of the Mongol Tribes*, 60.
[71] Vladimirtsov, *Obshchestvennyi Stroi*, 59.
[72] *Sbornik Letopisei*, 1: 52.
[73] Vladimirtsov, *Obshchestvennyi Stroi*, 60; *Sokrovennoe Skazanie*, 35. In Kazak the term quda designates the father of a daughter's husband or of a son's wife.
[74] *Sokrovennoe Skazanie*, 58.
[75] Vladimirtsov, *Life of Chingis Khan*, 33–35.

572 breast. They visit the tent of their confidante under the pretext of wanting to know if there is any buza. If there is buza in the neighboring tents and they cannot drink together, then the girl is sent a cup of buza (1) secretly by children. She replies by sending a gift. They

1. Buza is an intoxicating drink, made from rice, millet or sorghum.

send each other greetings (salem) and verses (ulen). The young man sometimes even accompanies his confidante in the wedding procession to the village of her father-in-law, where she gives him a farewell gift. Her husband is not offended, since he has also had a confidante himself (Tashkent Kazakhs).

Among the Kirgiz, friends (tamyr, bilish) also give each other gifts. The doslyk is friendship which is unbreakable in this world or the next. Friends /dos/ embrace each other sometimes across a saber or across a knife. After the embrace they eat bread (nan toraydy). Among the Kirgiz youth there is also an "arifdash," but of course it is in secret, as the bii added when he reported this.

/43/ CHAPTER IV

428 The allotment to the sons. - Inchi. - Succession.

On the father lies the care of providing each son with kalym and an allotment, inchi. (1)

1. Inchi or enchi comes from the word en, the notches made on the livestock being divided, for differentiation.

Among the Kazakhs and Kirgiz, the allotment to the sons, which depends entirely on the father, takes place in order of seniority and after their marriage.

An inducement to allotment is usually the crowdedness of the dwelling and the intractability of some individual.

The time for the allotment to each son also depends on the situation of the father's affairs, and is determined in the circle of the family, but not before the son is 15 years old, by the proverb: "at the age of 15, the master of the tent" (onbesh dzhil otau iese). Among the Kirgiz it is not before the age of 13 years, when majority is considered to be reached.

If the son requests it and the father does not wish to give him

his allotment at a given time, the son can wait or else leave without the inchi, but in the latter case he loses the right to demand it afterwards. They reply to such a demand by saying: "You did not wait for your father's consent." (atangnyng rizalygyna karakmadyng). In this case the son who is apportioning himself takes with him only what his wife brought at the wedding as a dowry. If the son behaves badly or does not know how to earn money and the father wishes to send him away the son will demand his father to give him a wife or an allotment. The people pacify them. If they are not pacified, then the part of the kalym which is not yet paid remains unpaid by the father, who sends his son away on a good animal (a good horse or good camel). /44/ This animal also takes the place of the allotment. If after that the son cannot earn the remainder of the kalym, then the father should pay it for him, for no father can avoid paying the kalym for his son. Otherwise the son is left to drive away the necessary number of livestock from his father's herd, without being considered a thief.

The apportionment of a son before he is married is always a sign of disagreement with the father. If the father becomes poor after that, the son, does not wish to support the father remembering his being given the allotment before his marriage. Then the people say: "We did not punish you then for stealing from your father (aibga buyurmaduk). Now feed and care for him." (as aukatyna kara, kut). The son who does not obey this instruction is scolded, beaten and despised (avgar kylady) by the people (yurt). If a son positively wishes to renounce the care of his father, then the son must give him the dowry brought by his wife and remove himself completely from the sight of the father (kasynan). If a son asks to leave his father peaceably before marrying, then he is not given his allotment, as he would probably go far away and lose the property, which in general the people do not desire. If this son agrees to join his older or younger brother, who have already received allotments, then they do not refuse him his allotment. The property of both brothers remains separate, in anticipation of arguments or demands for division. If a son absolutely refuses to marry someone, his father does not give him an allotment. If the son requests an allotment under the pretext of marriage, the father answers: "I will give you a wife myself, and only afterwards will I give you the allotment. Otherwise get out. "In such a case the father is guarding against the squandering of his property. Such is the data reported by Torgai. According to other information (bii Mikebai), if it is heard that the son "senselessly" absolutely refuses to ever marry and urgently demands to be issued his allotment, it is given to such a one. Among the Kirgiz,

428 Kurpetai Dauletkulov adds that then more is given, in view of the non-payment of kalym.

The father can apportion the younger son before the older if he wishes. Sometimes the older son says: "I will not part with my father, I will feed him until his death." After such a declaration /Inserted page. Picture of Torgai. Drawing by Akhmatov.7 /45/ the portion is alloted to the next son, not always with consideration of inheritance.

Making the division of the property for an allotment is one of the most difficult points of the customary law. Apparently they cannot divide the inheritance and frequently invite in experienced people for the division (burun inchi bulib yurgen adamlar). The matter is complicated still more by the fact that those who have not received their allotment steal from each other. Some say that the man receiving his inheritance will not consent to have the father himself calculate the amount of the share, but demands the participation of the relatives in it.

The maximum allotment depends on the father. The minimum is determined by elders, who have moral authority but not court power (Torgai).

Less is expended for the kalym of the sons (about one-third) than for their allotments (about two-thirds of the total property of the father).

Having paid the kalym for his oldest son, the father does not give him his allotment until he has fixed a certain part to each of his sons for a kalym, not excluding even that son (the youngest) who does not have to receive an allotment.

When making the allotment to one of his sons, the father splits up the entire property, with the deduction of the kalyms, into as many equal parts (sybaga) as he has sons to whom he must make allotments, i. e., all except one younger one. In addition to these parts he also puts aside two parts to support himself and his wife in old age (Perovsk uyezd and the Kirgiz Kurpetai Dauletkulov). According to Torgai, the property is divided into as many parts as there are sons, with the addition of one part for burial (kurkeben asatau). If there is not enough property, then the last part is not necessary.

Everything that remains is inherited by the son who receives no allotment, and he lives with his father until the latter's death and buries him. If after giving allotments to his married sons the father dies and leaves nothing for the sons who have not received allotments,

7 [Not reproduced--A.]

the former are obliged to marry off the latter. (Umurbek of the Auliye-Ata uyezd and the Kirgiz Kurpetai Dauletkulov). First cousins and other kinsmen have no obligation in this.

/46/ If the father dies, leaving 4 sons, a year later at the memorial service they slaughter an animal and say to the elders: "We will divide the inheritance, help us" (biz bulek bulek bulamyz, inchi mizdy bulib ber). The elders ask: "Do you want to divide it in four parts or in two (with two sons to each part)?" They divide the property into 4 or 2 parts, depending on the answer, but give the larger share to the oldest. If among the four sons, two are not married, then they cannot demand a division into four parts. The elders would not agree (buyurmaydy), to this and would divide it into two parts, combining an unmarried son with each married one, and the latter would take the place of the father for the former, i. e., he would marry him and give him an allotment. In this last division of inheritance they again divide the livestock in half, giving one or two animals to the older brother who has taken the place of the father.

If the mother is still living in addition to the four married or unmarried sons, then the property is divided into 5 parts. She can remain with her share with the son she loves most. The property of this son and hers are considered one(inchisi bir). He takes care of the burial of the mother. The other brothers give a small subsidy (yardam berisadi) for the funeral.

If of the four sons two are married and wish to divide the inheritance into two parts in such a way that both unmarried brothers will be with one of the married ones, then two kalyms are set aside at the beginning, according to the account made at the matchmaking, and only after that is the property divided into 4 parts. If the sons are not yet affianced the elders calculate the number of livestock necessary for a kalym. If the property is not enough for the kalym and the allotment, they set aside the kalym anyway in a generally acceptable amount, and give up the allotmen.

An unmarried daughter goes together with a brother who has not yet been given a kalym, so that from the kalym received for his sister he can pay the kalym for his own bride.

If two unmarried sons and one daughter survive, and there is little property, one son receives the property and the other the daughter.

If there is no property at all, the daughter is given to both brothers so that the kalym received for her is divided in half. In this case /47/ she can live with whichever brother she wants to. Both of them alike look after the clothes of the girl and her other needs.

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(teng karab turady).

If an engaged girl remains who is not yet married (uzetpegen), the older brother is charged with giving her away in place of the father and bears the expense of the wedding (toy).

Let us suppose that the father has 10, 000 sheep and 10-15 sons. Then without setting aside kalyms and allotments for each, he simply gives the son to be alloted a minimum of 30 and a maximum of 100 sheep without any special calculation (the determination of the amount depends on him), and adds as many camels as are necessary to carry the tent and goods (for a small tent 3 camels, and for a large one 5 camels). If he had only two sons, he would divide all the livestock into 3 parts, without making a special share for the mother. In addition, before the division of the inheritance 3 or 4 animals are separated out for the use of the father, out of respect for him.

If a married son receives a tent (ui) from his bride, he also receives his allotment in this tent. If not, the father gives him a new tent, or the value of it.

If the father has several married sons and they have their own tents, but the livestock, of which there is very little, has not yet been alloted, and the father or the sons propose to divide the livestock, then the elders divide everything without allotment, not excluding even the youngest (if the father wishes) in order to avoid envy among the sons. After this if the youngest son does not remain with him, the father with his livestock can join whichever son he likes best.

When the division of property takes place after the death of the father, the valuables and household furnishings (uskene) all go to the youngest son, so as not to spoil the furnishing of the tent, but the older sons take their choice of the clothing in memory of the father (akemning kuze).

If the deceased leaves childless wives behind him, in his tent, then the younger ones go to his brothers and the older ones remain /48/ with the step-children they like or with those who have lost their own mothers. Good children support their step-mothers out of respect to the deceased, even though several should come to one step-child. If a step-mother wishes to go away after a quarrel, they give her nothing. If she goes away peaceably the elders award her something for support (as aukat) and she goes to her clan (turkun) or to her son-in-law. Children cannot be left by their own mothers. The biis and the children do not allow it.

When the married daughter, by custom, visits her father's house (turkundemek), the father is obliged to give her a horse or a camel at least. After the death of the father this is given by the heir to the father's tent (ulkun ui, akening shangaragy). If a rich man has several sons and married daughters, he invites the daughters for this visit (turkundab kel'mekke) before beginning the family division of property, so as to discharge the debt, for the turkundemek is considered a debt (karz). He gives 1 or 2 animals to the daughters as they appear and for those who do not come he puts a like number aside (shigaryb koy ady) which he keeps himself for safe keeping. After this the division of property is made. The father is not inflexibly required to remain with his youngest son if he does not like him. But wherever the father does join the "large tent" the elders give more livestock, in view of the guests and other visits.

When after the death of the father the daughters appear at the large tent to receive the turkundemek, the head of the household assembles his older brothers for a conference, to decide whether to give each of them a gift or to make a joint contribution and to satisfy them with the sum received. Some bring a sheep to the contribution, others a horse, a coat, etc. If all of them refuse, out of egotism (ku buldy), the master of the large tent is obliged to give a little himself, since he has received a larger allotment than the others. The daughter indicates this in her request: "The smoke-blackened circle of my father remains with you. You live where my father lived. His property went to you" (akemnyng kara shangaragy sende kaldy, san akemnyng oturgan yerinda otursen mulkderi sende /49/ kalgan). All guests, tamyrs, husband's kin, relatives on the wife's side and demanders of various payments come to the master of the big tent. His nephew, /dzhien/the son of the daughter who has received her allotment comes to receive the "dzhiendik" when he reaches his majority. If he does not receive it the nephew steals it without being considered a thief. Some children, anticipating this, do not even wish to be inheritors of the father's tent (all from Torgai).

The Kirgiz divide the property, if there is one son, into 3 parts, of which 2 parts are for the father and mother. The old tent remains with the father, and he makes a new one for the son. If the father has an unmarried younger brother in addition to a son, the brother is married off first, and then the son receives his allotment. If there are two sons and the youngest is at peace with the father, they do as above. If not, the father gives both sons together not less than one-third, that is, one-sixth to each. With three sons, the parents re-

428 linquish half, i. e., each receives one-sixth. In general they give as much as is needed for support. For this reason the elders tell those receiving their allotment that they are young and will still earn their living, and tell them to be satisfied with little. "I myself," added the informant, the Kirgiz bii Daniyar, "told my father, as I brought him clothing (sarypay): 'If you want to give me property, do so, and if not, then give me your blessing (fatikha).' "

In addition to livestock, 1) the money of the father, if they all know of its existence, 2) land (1) and 3) debts are subject to the

1. According to reports from the Auliye-Ata uyezd, land is not divided, for those receiving an allotment can s.. can seek other land for themselves.

family division of inheritance.

428 If the debts of the father are discovered after the allotment,
426 then he is liable before the court and pays the son who received the succession. Formerly all the children paid the debts of the father after consultation with each other (kamtu klb). Now only he who receives the succession pays, and futhermore he pays it from his inheritance and not from what he has acquired, on which he is obliged to present proof or an oath. /50/ Children who have not received their allotments do not pay for living parents who are absent. Sons who have received their inheritance are legally not obliged to pay the debts of the father, because they cannot know about them, but morally they are obliged (khalal ul tuleydi). It is apparent from the books of the biis in the Perovsk uyezd that the biis reject claims against the sons for the debts of the father, basing themselves on the "exact customary law" (tolyk adat). Children who have received their allotments refuse to pay their father's debts, referring to the fact that "their portion is different, they have a special earmark" (inchim bulek, enim baska). But if they are ashamed to leave the debt to the father (atamyzga karz kylmaymyz), and wish to help the one who has received the succession, the debt is divided into 3 parts, of which one is paid by the successor, and two by the remaining brothers. Sometimes the rich sons are obliged to pay more, and the poor ones less.

Among the Kirgiz, according to bii Kurpetay Dauletkulov, the debts of the father are not adjudged to be paid from the inheritance. They only advise that a debt should be paid, if it is proven, because of the responsibility in the future life (kyyamet karz).

If the plaintiff appears before the division of the inheritance, 428
the debt is disposed of first, and then the division is made. If this 426
is found to be inconvenient, then the sum of the debt is distributed among the children in accordance with the allotment received by them. If the debt is greater than the property and the children wish to make the division (during the lifetime or after the death of the father), first of all something is put aside for a funeral and memorial service, and then the remaining property is divided equally and the debt as well.

If the father has only one daughter, then he must pay his debts from her kalym. After the death of the father a daughter without property is never answerable for his debts. However if the inheritance and the tent go to the only daughter, her guardian or "master" (kyzn-yng iese) is liable from the inheritance.

If a bride dies before her marriage, the part of the kalym which has already been paid is obliged (suzsiz) to be returned, with the father of the bride being allowed to give it to the court for those obligations of debt which the son-in-law took upon himself in another connection (books of the biis of the Perovsk uyezd).

/51/ The people require the son to pay the debts of his impoverished father on the grounds that the father went in debt in caring for the son (Torgai).

The inheritance (miras) (1) can consist of livestock, of money, 428

1. Perhaps there is inaccuracy in the division of means of acquiring property in Makovetskii (I. p. 37) as: 1) ata murasy - that inherited from the father, 2) uzi tabasy - that acquired oneself, and 3) burushty mal - profits from trade, matchmaking, loans and other affairs. At any rate Torgai divides property into: 1) ata murasy or ata mul'ki and 2) uz tabkany. But he did not understand the words burushti mal. Is this not the Russian word barysh /profit/?

of a tent with domestic furnishings, and of land, and in former times, also of slaves. The saying "among the Kazakhs the wife is inherited, among the Sarts the land is the inheritance" (kazaktyng katyny miras, sarttyng yeri miras) testifies to the fact that the widow is considered as an inheritance. The children can also be called miras.

Except for admonitions, no wills are recognised. The father cannot will so much to one son and so much to another. All the inheritance goes to those who have not received allotments, i. e.,

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usually to the youngest sons, who are also obliged to bear the expenses of the funeral and memorial service. If the father wished to deprive the son without an allotment of the inheritance, the son would demand it through the bii, who would grant it to him unfailingly. The only means of depriving the younger son of the inheritance is to allot it earlier to the older son, while the father is living.

If the children of the deceased are under age and his wife young, the brother of the deceased, who marries her, rears the children until their maturity, so that there can be no argument about inheritance. If no children remain, the expenses as are covered from the inheritance, and the rest they divide among themselves. A daughter who survives the deceased is brought up by kinsmen, who use the inheritance to marry her off. From the remainder one-third is given her under the title of an allotment /inchi/, and the remaining two-thirds is divided among them. (2)

2. Communication of Chinybekov.

If in addition to children a brother of the deceased remains who has not received an allotment /52/ the property is divided in half between the nephews and the uncle (if they want to divide it). From the half received by the sons of the deceased, each son receives an equal share for his allotment, after the division of the kalyms for the unmarried.

If after the death of a son only the father and brother remain, the father, as the giver of the allotment, receives all the property of the deceased, although he can give part of it to his son out of good will. The same thing is true among the Kirgiz.

If there are no children the brothers are the successors. If there are no brothers, the male first cousins (nemere), then the second cousins, etc. Only when it is impossible to find any male relatives, is the inheritance given to the daughters and their husbands. According to Torgai, the inheritance is never received by the daughter because she always marries into a distant clan. The Kirgiz Kurpetai Dauletkulov reports the same.

If there are several equally close relatives, for example, uncles, the only daughter of the deceased can choose between them. Whoever is chosen by her as a guardain receives only her kalym, if this was not received by the father, but the guardian does not receive

the inheritance. This is divided equally among the other kinsmen. If she has a brother but he is still under age, then an older relative helps him with advice in sending off his sister to her husband. If there is no relative in the male line, she is sent off by a relative on the female line: the father of her mother (nagashi), the mother of her mother (nagashe sheshe), the sister of the father (apa). The sending off of the bride is preferably entrusted to an elder, for example, the grandfather (baba), so that there will be no suspicion of cupidity. In general, whoever takes it upon himself to send away (uzatamyn dise) the only daughter receives her inheritance for himself. But if he is an outsider, he is obliged to keep the property intact for two or three years in case of the appearance of a kinsman (Torgai).

If a widow remarries, she receives nothing from the inheritance, except in the case where she takes her son with her, for the inheritance belongs to him. If she does not /53/ marry and wishes to live with her father, she receives only a tent and one-eighth of the inheritance. Often the relatives do not let the young son go to the new husband of the widow. A grown son is free to choose between his relatives and the new dwelling place of his mother.

A son born of a widow from a lover, without marriage, does not receive the inheritance after the death of the father. If a girl is never married but has children, she is considered the lawful wife of her lover, without receiving a kalym, and her children are not deprived of the inheritance (Perovsk uyezd).

Among the Kirgiz, property does not go away with the widow but remains with the closest relative.

According to Torgai, a widow can go away with the inheritance to the man she loves if none of the relatives remains alive. Such a widow, even though she may be old and ugly, will be married because of the wealth, though not without risk, for an heir may appear and demand his inheritance. Then her husband refuses to deliver it, under the pretext of expenses for the funeral and the support of his wife (khatyndy baktym kaktym), and the question remains debatable.

Among the Kirgiz, the widow, if the children want to divide the inheritance, remains with the youngest son. Here, excluding expenses for the funeral, as many shares are divided as there are sons, with the addition of one share for the mother. For example, when there are two sons, she receives one-third. This is the most just solution, but demanding people succeed in getting more for themselves.

428 There are no statements about a vacant succession, since no one lives without relatives and friends, who appropriate this property for themselves. In case of some sort of epidemic such property would be stolen (Perovsk uyezd). (1)

[567]

1. Slaves could not possess property or receive an inheritance. A slave and his family who were received in an allotment did not inherit anything. An unalloted adopted slave or his children received a small share of the inheritance. A slave woman was taken by the successor. They might give her something in view of advanced age. If she had a son, /54/ he could receive a part, for example, one-third of the usual allotment or less, depending on the generosity of the deceased or the successor.

[575] Children of concubines who were not adopted did not receive inheritance. The adopted ones received half of what the other heirs received. Communicated by Sultan Daulet Bushaev.

/54/ In ancient times, wergeld which was sentenced to be paid by the deceased was demanded to be paid by his heirs from the inheritance. But if the defendant died before the matter was decided, so that he did not have the possibility of clearing himself, the demand for the wergeld was refused. Now the heir takes part in the payment of the wergeld just as much as all the members of the clan which is paying the wergeld(khundas).

/55/ CHAPTER V.

Conditions for entering into marriage. - Matchmaking. - Oruntoy. - Wedding. - Gifts of the groom to the women. - The procession of the wedding couple to the groom's father.

[583] Entrance into marriage is dependant on the payment of a kalym /bride price/ but not on the majority of the groom and the bride. (1)

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1. Among the Alai Kirgiz the betrothal is most often settled when the boy is a year old, and rarely at a mature age. Communication of Grombchevskii. Matchmaking can take place also before the birth of a child.

The rich usually marry their sons when they are 12 to 15 years old, the poor much later, for example at 30 (Perovsk uyezd). In the

4:Grodekov--84 E-5 (ca 1885) 1889 RQ2 Kazak RQ2

The custom of hetaeristic hospitality exists in secret in the north and in Siberia, but less in the south. In one of the volumes of the Materialy dlia statistiki Turkestanskago kraia, a custom is mentioned where a guest puts his hand on the bosom of a sleeping maiden three times, and if she does not push it away, it signifies her agreement. Bii Sultan Kanaev denied such a right of the guest, adding: "This is unthinkable" (ol suz imes).

A wife and children who have not received their allotment do not have any property. If the wife lives with her husband, she takes part with him in the use of the property (malyna sirik). But she cannot manage the property under her supervision (khatyn biyleb mal beralmeydi). In the absence of the husband she manages the property. For example, on the demand of her husband's friend (tamyr), if he is dependable (isenimdi) she gives him things for his use, or gives them to him as a gift. When the husband returns he may not give his consent, and then the gift is taken back. The same thing takes place with an object sold by the wife in the husband's absence, in accordance with the opinion that "women have half a mind" (khatynnyng akyly yarymdyk) and according to the proverb: "a woman is without a mind, a frog is without a tail" (khatyn akylsiz baka kuyruksyz).

Among the Kirgiz, spouses have common property (inchiles). Wergeld for a wife is not received by her husband, but by her clan. If she /94/ was wounded by someone, the fine for the wound, if the fine was called aibom, is received by her husband. But if this fine was recorded in the decision under the name of wergeld, then it is received by the kinsmen of the wife.

The wife who goes away from her husband does not take anything wiht her (according to Abdrakhman, of the Auliye-Ata uyezd). Maykut (Auliye-Ata uyezd) transmits the information that in antiquity like the Siberian indigenous peoples according to Samokvasov, the property of the childless deceased wife, consisting of her clothing, fur coat, rug, blanket, bridal headdress and kerchief, is returned to her father or the person who married her off with this dowry.

If a wife complains of the squandering or unprofitable exploitation of property by her heedless husband the bii does not accept such a suit in his examination, but sends her to the nearest aksakals, clan chiefs and authoritative kinsmen.

A wife may trade only with the agreement of her husband. A widow (tulkhatun) is not prevented from trading.

A wife appears in court: 1) on matters of offense by the husband, etc., 2) in place of minor children, in the absence of her husband or

551 semi-Kazakhs, the sedentary Kazakhs who have become Sartizized.

Incidentally, let us recall here the opinion, heard among Russians that among the Kazakhs there exists a prejudice against giving the name of the wife, when asked for it, as well as against naming the exact number of heads of their livestock. The veracity of this is disputed by Khudaikul, who adds, however, that the sharp tone of the question and the persistent demand can cause evasiveness (kulyk). On this matter E. A. Aleksandrov reports from Kazalinsk: " Not only the rich but in general /Inserted page. Picture. Caption: Bii Sultan Kanaev of the Chimkent uyezd. Drawing by Akhmatov/ /101/ the Kazakhs do not say the number of their livestock, for fear of attracting the wrath of the gods. It is not even acceptable to say the number of one's children, for the same reason. "

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/102/CHAPTER VII.

The use of land and water. - Nomadizing. - Hospitality. - Common property. - Assistance.

423 428 Before the Russian dominion, land was not considered personal property. It belonged to a person only as long as he was on it, or cultivated it. To this day in the northern uyezds land is not transferred by inheritance. The son who receives his allotment in the Auliye-Ata uyezd does not receive a share of the land, of which there still is much in the uyezd. The land remains to the unalloted sons. In the southern uyezds tilled land and land sectors of all sorts are transferred by inheritance.

423 In the Perovsk uyezd, summer camps, winter camps, the grounds appended to them, etc., are more and more associated to certain communes and divided among them. The canals, with the land irrigated by them, belong to those who operate them and their heirs.

Among the Kirgiz only those sectors are sold on which there are trees and buildings. They abandon ploughed fields when they depart. These become the property of the person who occupies them.

Summer camps and winter camps are occupied by the Kazakhs by rights of hereditary use. The construction of canals, farm houses, buildings and gardens transforms the land into private property. Shares of lands do not exist. The winter camps are primarily in places where saxaul, shrubs or rushes grow. The summer camps are in cooler places, i. e., further north or in the mountains.

Land use, by this system, is not distributed equally and is found

1/2 [Not reproduced --A]

171 one should remember that the paternal authority of the Chinese, the Japanese, or the Romans is a model for the imperial authority only by analogy, as a manner of speaking. The Confucian admonition to regard the emperor as a father is not taken literally. The Chinese imperial authority pattern is derived from other sources than the paternal role; [602] so is the Kazakh. But Kazakh society as a whole is more steeped in the kinship relation, and hence authority in general is modeled on the paternal to a greater degree than in the other patrilineal societies mentioned.

692 538 Age is the underlying basis of authority in the Kazakh social system, since the old men are the fathers. Paradoxically, traditional Kazakh literature, both oral and written, deals mostly with young heroes. These youths are praised for their daring, strength, cleverness; they defy enemies both human and supernatural. But the hero is typically a [498] younger prince who gains a kingdom in defiance of the law of primogeniture by subduing or outwitting his older brother; the young prince never defies the older generation. The father and elders generally support the elder brother, but they do not actively suppress the younger. In contrast, Kazakh literature of the Soviet era depicts youth defying or combatting his elders.

KAZAKH SOCIETY AND THE PARTY LINE

171 565 Throughout the history of western society, the social classes have been distinguished by differences in birth; the nobility carefully separated themselves from the taint of common blood in medieval Europe, in Renaissance societies, and in modern times. The Kazakh society—and the Mongol or Uzbek for that matter—is anomalous because it maintains class distinctions of aristocrat and commoner while affirming [619] a general relatedness through descent from a single ancestor. There are even fictional genealogies which unite all steppe nomads.[1]

554 These relatively simple anomalies have caused a dilemma in Soviet publications on the nature of Kazakh society. There is social differentiation not only by birth and descent, but also by wealth. In Kazakh society, [177] the two bases of social inequality were more or less coordinate until [220] the victory of Sovietization. The clan leader was superior to his fellow clansmen by right of birth; the village leader was superior to his fellow villagers by right of birth; both were also richer than the other clansmen or villagers. By right of precedence they allocated the best pasture lands to themselves and decided all judicial questions in their own favor. Both wealth and social influence were based on the number of kinsmen [602] who would support a man at a council, or before the law, or in a fight, a feud, or a war. A man of eminent birth and of wealth could get more kinsmen to support him than could a Kazakh with neither. This might seem anomalous, since theoretically a Kazakh is related to all other Kazakhs, and kinsmen help each other. But kinsmen help closer kinsmen before they help distant kin; and kinsmen help superior, influential kinsmen before they help inferior kinsmen who are lacking in influence.

[1] Aristov, 1894, pp. 394-395.

they had names which harked back to the Chingisside era. Valikhanov draws an important implication from this: inasmuch as membership in any horde was based on ancestry, the union as a whole has a genealogical significance. The instances of Chingisside ancestry are not of the same order as the indigenous ones, therefore,[49] for they are properly speaking fictitious.

The direct patrilineal descendants of the Kazakh nobility who brought the original confederation to life are located by Kazakh tradition in the Little Horde.[50] We know that the Little Horde was not an original founding member of the confederation of hordes, but was rather the junior member. So reads the Kazakh tradition reported by Valikhanov, and which must be accepted as a primary datum. Therefore the location of the original founder of the entire Kazakh confederation in the Little Horde depends on the application of another principle to regularize or legitimize the rank order of the Little Horde among the other hordes. The legitimizing principle according to which they sought to align the objective historical reality known to at least some Kazakhs is that of ultimogeniture. The Mongol law, according to Valikhanov, was still regarded as being in force through

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[49] Idem.

[50] Ibid., 292.

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transmission via Khan Tiavka (c. 1700). This law decreed that the right of succession to the father's status and to his residuary possessions, went to the youngest son or to the youngest male family member; so Valikhanov claimed.[51] N.B.: we are in possession both of the Mongol law code--the Great Yassa of Chingis Khan--and of the code transmitted by Khan Tiavka. The provisions of these codes relative to the inheritance of the father's seniority in no way corresponds to the version given here by Valikhanov. On the contrary, while the principle of ultimogeniture applied to the residual corporeal properties of the father and a special title, not that of the father, the youngest son did not inherit his offices, rank, titles, social position, and other incorporeal properties.[52] But the important thing is not the actual facts, namely the content of the codes and decrees, but what the 19th century Kazakh believed them to be; what he chose to make of them in the interests of establishing a social order, a ranking of the hordes, corresponding to other considerations. And in order to legitimize the realization of those other considerations, by assigning the priority to the founders of the Little Horde, a double fiction was applied. First,

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[51] Idem.

[52] Riasanovsky, Customary Laws, 7 ff; ibid., Fundamental Principles, 83 ff.

596 The family estate was not communal family property in the usual sense, nor can the paterfamilias be regarded as the owner of the family estate which he controlled. The family estate, both the physical and the intangible wealth, was an estate held in trust, and this definition fits the conception of the family (and the lineage) as a corporate structure.

Inheritance in the Great Horde

• 428 Properly speaking, only a small proportion of the family physical property was transmitted on the death of the father. Prior to his death, his sons, with the exception of the youngest son, had allotments made over to them of various kinds. In the normal course, these sons would have had a tent or yurt set up for them by the father,[106] which was generally done on marriage, but sometimes earlier, when they came of age; these two events, of course, might also be simultaneous. Thus, [584] youths among the Kazakhs were generally regarded as coming of age between their twelfth and fifteenth years; among those who could afford it, the marriage likewise [583] took place at or about this time.[107] The father likewise paid the kalym or bridewealth for these sons; and he gen-

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[106] Radloff, Aus Sibirien, I, 477.

[107] Dingelstedt, 153; Izraatsov, 78.

[Great Horde]

428 erally supplied them with herds in sufficient quantity for independence, if he could afford it, and if he so wished.[108] On the other hand, a rich Kazakh might retain his sons by his side, or at least in the same household economy.

596 428 Kazakh families other than the rich were often forced by economic necessity to break up the family on allotment of the sons who had come of age. The father, once he had made provision for his sons, lost power over them, and they moved as they wished. But this quittance of obligation was a reciprocal relationship; the son lost all further claims on his father's wealth.[109] The poor Kazakhs made no allotment to their sons at all, since they could not afford to; it would have been uneconomical to break up the herd.

428 The youngest son was the residuary legatee of the father's property; he remained by his father's side until the latter's death, and acquired the father's tent, and such portions of the herds, etc., which the father had not made over previously to the elder sons.[110] In fact, the relationship between the youngest son and the parents was not restricted to the father; if the wife

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[108] Dingelstedt, loc. cit.

[109] Izraztsov, 2-3.

[110] Dingelstedt, 153.

[Great Horde]

428 survived her husband, the youngest son and the mother shared a double portion. Izraztsov gives the following instance: a woman with four sons received from her husband a herd of 200 head of livestock of various kinds. She then divided the herd into five parts; two parts, or eighty head, were reserved for her youngest son and herself, the three older sons, forty head each. This, however, did not require the elder sons to move away, for all the herds could continue to share in a common pasture, and to be otherwise indistinguishable, the natural increase being proportional to all.[111]

428 948 589 The widow's portion again was held in trust for her minor sons. A distinction was made between children born out of wedlock as follows: if a widow has borne sons to her deceased husband, any further sons she bore could not share in her husband's estate, but were reckoned to their natural and actual sire's line, a consequence of the doctrine that the son of an unmarried woman participated with full rights in his biological father's estate.[112] On the other hand, sons born to a widow who had borne no sons previously were reckoned to her husband's line if they were born within a few years after the death of the husband, and thus social fact overrode the biological.

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[111] Izraztsov, loc. cit.

[112] Dingelstedt, 154.

[West Horde]

429 The mother was the guardian of the children until they came of age. Failing a man's widow as guardian of his surviving children, the closest agnatic kin took over the guardianship of the minor children. These were apportioned equally when they reached their majority, the youngest son possibly getting a slightly larger proportion of the entire estate. The trustee in this case took charge of the entire estate until it was apportioned. A daughter did not participate in the apportionment, she
428 was entitled only to her dowry.[113] In point of fact, however, these rigid rules did not always work out purely. We have one case in which a daughter participated in the division of the parental estate to a greater extent than the mere apportionment of the dowry. The son in this case inherited thirty horses, 300 sheep, five cattle, five camels, and a yurt with its furnishings; the daughter received 100 sheep and valuables worth 100 rubles,[114] a portion greater than a typical dowry, but less than a full share in the estate.

Where equal provision was not made, other factors, such as favoritism may have been brought to bear. In any case, no Kazakh died without society making provision for the apportionment of his heirs: succession ab intestat was

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[113] Izraztsov, 4; Lingelstedt, 153.

[114] Izraztsov, 70.

428 unknown to them.[115] The maximum which any of his children would receive was determined by the father; the minimum was often set by the elders and respected men of the community to whom appeal would be made by a dissatisfied heir.[116] The authority of these elders was advisory rather than coercive, however, for they had no means other than public opinion to cause the father to change his mind.[117]

428 596 Further restrictions on the distribution of the family estate existed: a kalym or bridewealth had to be provided for all the sons, a mandatory provision in the Kazakh customary law.[118] Again, if a man was squandering his patrimony, a wife could appeal to his senior kinsmen, the elders of the community, and these men could adjudge the father irresponsible, and remove his estate from him. In such a case, the estate was usually allotted to a major son, or failing such, to the closest paternal kinsman to be held in trust for equal apportionment in the manner described above.[119] These evidently drastic measures could only have been found necessary rarely;

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[115] Dingelstedt, loc. cit.

[116] Grodekov, 45.

[117] Dingelstedt, loc. cit.; Grodekov, loc. cit.

[118] Dingelstedt, loc. cit.

[119] Israstsov, loc. cit.

[Great Horde]

428 nevertheless they must be regarded as limitations on
596 the authority of the father, which was far from absolute therefore. It would be difficult to see, in any case, in view of what is known of Kazakh society and of the steppe societies generally, how a man could have an absolute authority, independent of all outside force, within his family. The family was far from an independent entity even as an extended family. It was part of a larger whole which included wider and wider reaches of collateral agnatically related lines, and hence extended both backward and forward in time.

429 The estate of a man went first to his sons, whether major or minor; if he died without male issue, the estate then adverted to his brothers. Even if the brothers had quarreled and were living apart, no one could prevent this order of succession, for the estate necessarily remained in the male line, if not the direct line, then in the closest collateral line.[130]

According to Izrastsov, the following was the order of succession:

1. Sons, grandsons, great-grandsons, etc.
2. Brothers, brothers' sons, their successors.
3. Father's brothers, father's brothers' sons, their successors.

In each group, the division was equal, subject to the

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[130] Izrastsov, 5.

[Great Horde]

428 will of him who made the bequest. The inheritance passed to the second category if the first died without issue, then to the third if the second was not filled, and so forth.[121]

428 596 It is of importance to note that the inverse order of succession, namely, brothers before sons, was not the case. And it is difficult to see how this could possibly have been: the estate included not only real, but intangible property as well, and with its control was correlated a great amount of authority. Now if brothers quarreled, and they often did, then they would split up. If an estate descended fraternally before passing to the next succeeding generation, this would mean that the locus of authority was always on the verge of moving off. Such an unstable situation could be envisaged, but it would also necessitate certain corrective or compensatory measures in order to lessen the friction which might thus arise; still no such measures are found in Kazakh society. In general, among the Kazakhs, the Kara-Kirgis, the Kalmuks, the Buryats, and other steppe societies of Asia, the line of descent passed to the son, and failing a son it passed to the closest collateral line, whether that of the brother or that of the brother's son.

601 428 In addition to the evidence, both positive and negative, and the comparative material from other societies,

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[121] Ibid., 11.

[Great Horde]

601 there is a clear confirmation of the order of succession in the kinship terminology. In fact, the close correlation with a particular--and relatively rare--application of the kinship terminology should become a classical case of a behavioral correlate of kinship terminology. In a manner parallel to that of the Kalmuks, brother's son and son's son bear the same term, the term in Kazakh being nemere.

604 428 The avunculate, the relations between mother's brother (nagaŭy) and sister's son (dŭien), likewise played a role in the transmission of real property. The latter could call on his maternal uncle for support in paying his bridewealth, for the payment of a debt, and so forth. If the maternal uncle failed to fulfill a socially recognized obligation, the dŭien could effect a seizure on the stock of his nagaŭy's stock up to three times, and the nagaŭy had no basis for protest. If the dŭien exceeded the three sanctioned seizures, only then could the nagaŭy tell him that he had forfeited the rights of a nephew.

604 428 Just as the nemere term has a definable social correlate, so does the dŭien concept: both are related to the mode of acquiring a wife, transmitting inherited property, establishing respect and authority.

Marriage in the Great Horde

A Kazakh proverb runs: "A Sart (agricultural Turk

[Cf. cat. 114, AHI Mongolia, pp. 431-432 -- Analyst]

[Middle Horde]

58 reciprocal one; on coming of age, the son could make no more demands on the father; the allotment made was at the same time a quittance of further obligation.

A distinction was made between the inheritance of real property and the transmission of such intangibles as authority. The father was the absolute lord in his family, and his authority passed, in accordance with the principle of primogeniture, to the eldest son, or lacking a son, to a brother of the deceased. Related families were gathered into villages, aul, and a village elder, or bii, generally had a position of influence in public affairs, and a limited amount of authority in intra-family matters. Thus there was a limitation on the paternal power.

[428] The leadership of a sub-lineage, a village, or a family, passed in the direct line through the eldest sons.[168] The status of bii some decades later, in the 1860's, is described as quasi-hereditary, and a case is cited by Valikhanov in which it remained in one family through four generations.[169] The office later came to be appointive, and only quasi-hereditary.

695 Among these Kazakhs of the Middle Horde, one means
682 of settling disputes is reported as having especial promi-
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[168] von Lebedour, II, 459-461.

[169] Valikhanov, 162.

[Middle Horde]

695 603 584 nence, the use of affinal ties. The bii would propose that a youth of one side marry a sister of the other; or alternatively, that one party marry off his son to a daughter of the other, provided that neither is already betrothed. The disputants would then embrace and call each other kuda, father-in-law of the respective children. In such a case, the children must be eligible to marry according to the rules of exogamy.[170] The close interrelation between the kinship system and the law is demonstrated in the interfunctioning of both consanguineal and affinal relationships in the adjudicative process.

177.69 695 428 The legal process continued to function within the kinship system even under conditions of acculturation, as evidenced in the following case among the Kazakhs of the Middle Horde in the 1870's. A man had two older brothers who had been allotted their shares of the father's estate during the lifetime of the father, while the youngest remained by his father's side until the death of the latter. Through the principle of ultimogeniture, the residual property should have gone to the youngest son, but the two older brothers threatened to take the herds and pasturage away from him. The youngest brother then appealed to his legal authorities, the biis of his community. (Note: the Kazakhs of the Middle Horde had been

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[170] Ibragimov, 237.

[Middle Horde]

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longer under Russian rule than those of the Great Horde. The acculturative process had proceeded farther in the Middle Horde than in the Great Horde as of the 1870's, as will be seen from the issues raised in the pleadings.) The older brothers argued that the Kazakh customs were no longer in force, and that Russian law required an equitable distribution of the paternal estate regardless of the settlements made on the older sons by the father during his lifetime. The matter thus presented to the biis brought from them the decision that the youngest son, the residuary legatee, had to give up one of his winter camps to the other two. (Evidently a wealthy estate was in question here.) The youngest son appealed to the Russian courts, who advised him simply to comply with the decision of the biis, but to take one of the older brothers' winter camps instead. The youngest son declined both decisions.

His appeal to the Russian courts was strongly resented by the community and he was threatened with arrest, whereupon he removed to a nearby town, and the entire affair was placed in the hands of the local biis, but it was left unsettled. Finally the courts found in favor of the youngest son after the appointment of a new governor general in the region.[171]

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[171] Ibid., 253-257.

[Middle Horde]

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A number of salient features of Kazakh family life in the Middle Horde are brought to light in this case: the practice of allotment to all sons but the youngest during the lifetime of the father; the idea that they thus gave up all further rights in the estate of the father; the principle of ultimogeniture; the role of the bii in settling disputes; the break-up of family unity through a quarrel between or among brothers. The measure of the degree of acculturation is likewise made precise in this matter. We note a number of new features: the appeal to Russian practices in inheritance; appeal to the Russian courts to decide the matter; the resentment by the Kazakh community of the Russian appeal; the final decisive role of the Russian administration--which, it is important to note, found for the plaintiff in accordance with the Russian court's conception of what the Kazakh custom was, and rejecting the elder brothers' notion of what the Russian custom in inheritance was. The flight to the town to escape the resentment of the community made by the youngest brother indicates nothing about acculturation: it could have been a new feature brought in by Russian contact, it could have been an old feature, because towns have existed in the vicinity of the steppe for many millenia.

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The Middle Horde differed from the Great Horde in two respects: it exhibits no trace of any dual organization, a feature of the large-scale social structure of

-482-
[Little Horde]

600 married a second wife without the prior consent of the
595 first.[207] However, the maintenance of separate house-
428 holds was not correlated exclusively with the need for diminishing family friction, it was closely associated with the distribution of family property among the various segments of the household, as we shall see when the question of inheritance and succession within the family is taken up. Briefly, subject to later confirmation, it may be said that the wealth of the family was settled on the sons during the father's lifetime in a polygynous family, and if the settlement was made while the sons were still minor, the wife living in her own tent with her children held the patrimony in trust until her sons came of age. There was some change of roles within the household: while in the 1870's the first wife was the mistress of the menage, by the turn of the century the second wife could often rule over the first.[208]

587 A certain number of the polygynous households were the result of the levirate where the surviving brother was already married. A proverb of the Little Horde runs:

aga ulsa dzenge mura
eni ulsa kelin mura
at ulsa saury mura.

"If the elder brother dies, his wife goes to the younger

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[207] Balliuzek, 85-86.

[208] Karuts, loc. cit.

[Little Horde]

177.58
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ground for divorce occurs now for the first time and may be added to the general transformation of certain traits through acculturation.

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Rules of Inheritance and Succession

We have seen that the estate of a brother was equally distributed among the surviving brothers on his death. The equal division of a man's estate among his survivors is only one aspect of a complex problem. The practice of allotment or apportionment of sons as they came of age was the basic mode of transmission of physical property, which together with the payment of the kalym on behalf of the son, formed part of the total property transfer when the son came of age. For the coming of age was associated with marriage, and entailed both the payment of the kalym and the apportionment of the son.[217]

The youngest son, in contrast to his elder brothers, was not portioned off during the lifetime of the father, although the kalym was paid on his behalf when he came of age, that is to say, when he was married. He shared his father's estate during the father's lifetime, and did not take up full possessive rights until his father's death, when he became the sole residuary legatee of the

[217] Balliusek, 104.

[Little Horde]

428 estate. For it was considered that the elder sons gave up their rights in any further share in the patrimony when they were portioned off. The youngest son thus had a favored position in one sense--usually if the father were wealthy: compare the case cited in the Middle Horde, in which the youngest brother was envied and hailed into court by his elder brothers. The youngest son likewise received a special title, found both in the Turkic and the Mongol worlds, prince of the hearth--the lord by right of succession to the paternal hearth.[218] However, any civil or military honors, any hereditary rank by birth was passed to the eldest son, as well as the position of authority in the family and community.

The apportionment during the lifetime of the father is considered to have been recent among his Kazakh by Balliuzek. This is an interesting point, if it can be maintained successfully, and it is further claimed that the practice arose because formerly there had been much conflict over inheritance. This practice of apportionment during the father's life, or rather, on the coming of age of the son, is called inče, and in it, the son gives up all further rights in the paternal estate, except in the case of the youngest son. It is further maintained by Balliuzek that the daughter's share is

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[218] Idem.

[Little Horde]

equal to that of the sons in the inge, her share taking the form of a dowry or marriage portion.[219] Unfortunately, it is nowhere corroborated that the inge was of recent date (as of the year 1872), and the equal participation of the daughter was definitely limited to wealthy Kazakhs, who made a dotal settlement equal to the kalym they received for the daughter as a matter of prestige.

It is the ideal family situation which is here described: the wealthy family could afford to realise in practice the family ideal by maintaining the extended family unity. When the son was portioned off, he remained within the family enclave or aul, which was in turn identical with the extended family of the wealthy. For in such a case, the collateral lines, including father's younger brothers, and their sons, and their sons' sons, lived together with the father, his sons, and their families and offspring in one great community. When Pater Schmidt equates the Grossfamilie with the aul of the Kirgis-Kazakh, his equation can be accepted in the light of the considerations here entertained: that it relates to the ideal family, the sought-after family, the wealthy family.[220]

In the transmission of the property from one gen-

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[219] Idem.

[220] Schmidt, Eigentum, 187.

[Cf. Cat. 116, AHI Mongolia, pp. 481-482--Analyst]

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[Little Horde]

428 In the transmission of the property from one gen-
604 eration to the next, the rights of the dzien, the sister's son and the daughter's son, to the property of the mother's brother and his mother's father were recognised. In the Little Horde the dzien had the right of free seizure (baranta) up to three times from his nagasy or mother's brother, whether by agreement with the nagasy or without his knowledge. The dzien could not be punished unless he abused his rights by seizing beyond the customary three times.[221] This is the avuncular relationship and neither here nor elsewhere was it a smoothly working principle. The mother's brother did not volunteer to transfer a part of his property to the sister's son; the latter had to make seizure to obtain it. In principle it is different from the bulk of Kazakh (and Kalmuk) consanguineal relations; these are agnatic. The avuncular relationship in question here is a matrilateral relation, which, added to the patrilateral, form a limited cognatic pattern. Thus a problem of the dynamics of transition from the principle of agnatic to a partial application of the principle of cognatic kinship is posed. The problem further is that the mother's brother is not a voluntary participant in the relation, but seeks to protect his property against the seizure by the dzien, warning him that after the third time he

[221] Balliuzek, 109.

[Little Horde]

428 loses his rights as such. The same relationship, with
604 its inherent conflicts, is found among the Kalmuks.[1] Another aspect of the problem is the unforeseeable nature of the parents. It is not merely that the nephew comes silently and unbeknownst to the uncle to drive off his portion; it will also be recalled that marriage residence is patrilocal, and the brother may not reckon with the existence of a sister's son who appears from afar to demand what is his. Such a seizure may disturb whatever prior arrangements the nagaŭ may have made. An act of seizure is a violent act, and per se is disruptive of social peace. The entire relationship is a disharmony built in to the social structure.

428 The principle of apportionment to the elder sons during the lifetime of the father and that of ultimogeniture continued in force in the Little Horde at the turn of the century: "The inheritance on the death of the father goes to the unmarried sons still living in the paternal aul, or if all are married, to the youngest, who remains with the father. The elder married sons will have been established during the father's lifetime and have no more rights in his property."[222]

577 Adoption was generally practiced among close kin alone,[223] which recalls the practice elsewhere of adoption

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[222] Karuts, Kirgische Hochzeit, 42; Karuts, Unter Kirgisen und Turkmenen, 115.

[223] Balliuzek, 96.

[1] [Cf. cat. no, AHI Mongolia, p. 274 ff. -- Analyst]

[Inner Horde]

624 576 This pattern obtained for the lineage, for the aul, for the extended family, and in those cases, a fortiori, when any or all coalesced in one unit. The aul was the nomadic unit, which camped, moved, and pastured its herds together.

595 The family was polygynous, but the usual family had but one wife, and more than two wives in a family was virtually unknown. Two reasons are given, the kalym was high and women were few. In the polygynous household, the first wife was in a favored position, for she could only be punished by the husband, while she in turn could punish the others, a distaff reflection of the rule of patriarchal authority and of seniority. This contrasts with the situation in the Great Horde, where [564] the first wife had no such preferred status. On the other hand, the wife enjoyed considerable freedom in general, and there was something close to equality of the spouses.[245]

● 428 The children of all the wives inherited equally from the father, and both sons and daughters shared in the estate,[246] the daughters' portions being the settlement of a dowry. On the marriage of the first-born son, he was usually charged with the support of the senior wife, his mother, in keeping with the prin-

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[245] Ibid., 107-108.

[246] Ibid., 108.

[Inner Horde]

428 ciple of primogeniture. The custom of ultimogeniture, whereby the youngest son was the residuary legatee and likewise received the title of "prince of the hearth," also was practiced. Despite this favored treatment of the youngest son, the actual authority passed to the eldest son, ceteris paribus, i.e., if he were of good health in mind and body, etc.[247]

586 596 177.89 Divorce is reported as having been easy and frequent among the Kazakhs of the Inner Horde,[248] but since this is totally unlike other reports on the Kazakhs, it is to be understood as a reflection of acculturative conditions, and not a normal situation. Nevertheless, patriarchal authority, and the extended family as a continuing unit, tended to resist acculturation: the daughter-in-law would be chosen not by the son in question, nor yet by his father necessarily, but by the patriarchal head of the entire extended family.[249] On the other hand, under the conditions of culture contact, a tendency toward neo-local marriage residence arose in the closing decades of the 19th century.[250]

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601 Kinship Terminology: General Considerations

The Kazakh kinship terminology differs in many

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[247] Ibid., 108-111.

[248] Ibid., 108.

[249] Ibid., 110.

[250] Idem.

601 used for So) is bala.

A matter that calls for further analysis is the cousin terminology. The term for Fa Br So is nemere, differentiated as Fa Br Ol So, nemere aga, and Fa Br Yo So, nemere ini. Fa Br Ol So and Fa Yo Br bear the same term. The term nemere is also applied to Br So and So So, and thus applies to all those who stand eligible to receive the patrimony, real and intangible, of the family; more important, this group of kin, called by the same term, form a unit which ego looks to for maintenance of the paternal line. If the direct line fails, others stand as a reserve of kin to maintain it. This is the outer limit of the extended family, together with those more closely related in the paternal line as a corporate unit. Within this group the junior levirate is practiced.

601 The Fa Si So is dǚien, and the term is extended to
●428 include Si So and Da So. Above we have seen the limited rights enjoyed by the dǚien in the property of his Mo Br, from whom he was legally permitted to rustle livestock up to three times; beyond this number, the nephew forfeited the rights of a dǚien. The rights of the dǚien were associated with some kind of forced or violent act. Moreover, the rights of the uncle were protected by supplying him with a formula which effectively was a quitclaim from the viewpoint of the nephew. Implied here

601 428 is a certain amount of tension, of dysnomie: if a system is functioning smoothly, there is no need of force and formulae for the containment or limitation of that force.

The rights of the Si So in the estate of the Mo Br go beyond the strictly agnatic system of relationships. The Si So and Da So relationships are cognatic, for they bring in relationships to the kinship system which exist through the mother.

The right to share in an estate in an agnatically related society is asserted by demonstrating descent from the father or the paternal grandfather; these are patrimonial rights. The system of rights shared by the Kalmuks and the Kazakhs, however, are established through descent from either grandfather, paternal or maternal, although in a greater proportion from the Fa Fa than from the Mo Fa. This is an expression of the mode of transmission of the property rights. From the viewpoint of the kinship terminology, however, a totally different problem emerges: it will be recalled that the cousin system of the Kazakh is of the Omaha type; that is, there are separate terms for paternal parallel, paternal cross, maternal parallel, and maternal cross cousins; and there is the distinctive feature of Omaha cousin terminology, Fa Si Ch bears the same term as Si Ch, dzien. But the variation on Omaha is that the term dzien has

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[Soviet Era]

683 422 Soviet era. The Orkhon and Yenisei Turks of that early time likewise distinguished between the husband's estate and the dowry of the wife such that the husband could seize it only in payment of a fine; short of such a contingency, the dotal property was in a separate category.

58 Betrothals were arranged while the children were not yet of age, subject to the supreme authority of the family head. The junior levirate not infrequently caused a boy of eight or nine years to be married to a mature woman. On the other hand, girls might be married before puberty.[290] [553] A wife on taking up residence in her Hu Fa gul underwent a change in status symbolized by a new soubriquet which generally signified whether she was pretty, clever, sympathetic, etc.[291] The new name thus emphasized the discontinuity in her social being, but at the same time appears to have been oriented toward positive or praiseworthy attributes in a woman.

428 The inheritance complex involving primogeniture, equitable apportionment and ultimogeniture continued in force. Thus paternal authority passed in the line of the eldest sons, and with it as a rule the totality of the incorporeal property, in such titles, ranks, honors, prestige as the Soviet era still permitted.

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[290] Ibid., 48.

[291] Ibid., 59.

428 All sons except the youngest were equitably apportioned from the corporeal property during the lifetime of the father, and they thereby gave up all rights to inheritance on the father's death. In addition, daughters were assigned their marriage portions when they wedded, and likewise had no further claim on the paternal estate. The residuary legatee was the youngest son.[292] And this pattern, too, extends down from the earliest times to the most recent, and is shared by all the pastoral nomads of the Asiatic steppe.

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[292] Ibid., 67.

221 noontime. Then another such march is taken, so
361 that on the average /341/ the nomads move about forty versts in 24 hours, if there is no reason to hurry or to slow down.

595 Among the Kazakhs, as Moslems, there is
592 polygamy, but since the support of the wives and the payment to their parents for their purchase is quite burdensome, Kazakhs only rarely have two or three wives, while many have four (sic). The poor, however, have only one wife for the most part. Usually the oldest brother in the family has several wives. He is also the head of the family while it is living together, and his first wife directs the entire household. This wife is called 'baibicae and not only are the other wives of her husband subordinate to her, but also all the female members of the family. Often the head of the family sends off part of the herd under the leadership of this wife for several hundred versts, and remains himself around the plowed land and his young wives, or else leads a nomadic life with the other part of the herd separately. In the winter, however, they travel together.

●428 Inheritance. Usually the Kazakhs divide the inheritance while still alive with their grown sons, either upon their marriage or shortly thereafter. In all cases the rule is observed that the children of each mother receive an inheritance only from the estate of their mother, and not from the dowries of the other wives of their father. Also, after the death of the husband the wife keeps exactly her part of the dowry. The daughters are given in marriage, and after that they have no right to inheritance from the father if there are sons.